Award No. 10826
Docket No. MW-9488

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement beginning on March 1, 1956, when it assigned the work of dismantling certain portions of Shed 'O', Savannah Terminals, to a Contractor whose employes hold no seniority rights under the effective Agreement;

(2) Each Bridge and Building employe, holding seniority on the Savannah Division who worked during the months of March and April, 1956, at a lesser rate of pay than their qualified classification, be paid the difference between the rate of their respective assignment, March and April, 1956, and their qualified classification as shown on the 1955 seniority roster, for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in part one (1) of this claim;

(3) Each Bridge and Building employe holding seniority on the Savannah Division, who was off account of force reduction during the months of March and April, 1956, and being shown on the 1955 seniority roster, be allowed pay at their respective time rates for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in part one (1) of this claim;

(4) The individual claimants and the amount due each of them be determined by a joint check of the payroll and seniority records of the Carrier in accordance with the principles enunciated in Interpretation No. 1, to Award 1421, Serial No. 23.

EMPLOYES' STATEMENT OF FACTS: Maintenance of Way and Structures Department employes have historically and traditionally performed work of the character involved in the instant case.

In connection with the remodeling of Shed "O", Savannah Terminals, beginning on March 1, 1956 the work of dismantling certain portions

The burden of proof rests squarely upon the shoulders of the Petitioners as the Board has consistently held. Carrier insists that the Employes shoulder that responsibility. A mere assertion by the Employes that the Agreement was violated does not make it a **fact** ipso facto.

SUMMARY

Carrier has clearly shown that the Employes have not complied with Article V of the November 5, 1954 Agreement by filing this **blanket claim.** The Employes allegedly damaged have not been named as is required. The claim is barred.

Carrier has shown that neither the rules agreement, past practice nor anything else supports the Employes' blanket claim; therefore, it should be denied in its entirety. Carrier so urges this Honorable Board to so hold.

All data submitted in support of Carrier's position in this case has been presented orally or by correspondence to the Employes' Committee, and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record reveals that it was necessary for the Carrier to remove two sections (which were in fact no longer needed) from one of its buildings designated as Shed "O," a structure approximately 900 feet in length and 72 feet wide. Shed "O" was divided into 3 equal sections separated by fire walls.

Adopting the nomenclature of the parties, the words "shed" and "building" have the same meaning and are used to describe that part of the overall structure above the floor—the floor itself being considered separate and distinct from the "shed."

The two sections of the shed or building which the Carrier needed to remove were known as Sections 2 and 3; they were detachable; and, insofar as the record shows, it was possible to remove them without the performance of any carpentry work of consequence on the remaining portion of the building, Section 1.

Carrier action, which resulted in this claim, was as follows: It sold Sections 2 and 3 of Shed "O" to an independent contractor, a salvage dealer, who performed all of the work required to raze and remove the two unneeded sections of the shed down to the level of the floor. There was an exchange of considerations in reference to the sale, the seller obtaining a nominal cash sum and (without expense) the removal of the sections; and the purchaser acquiring ownership of the salvaged materials.

The Organization alleges that its agreement covered employes had the contractual right to perform the work required to dismantle and remove Sections 2 and 3 and that the method used by the Carrier was merely a subterfuge to evade the Agreement.

We cannot agree that such was the case.

The Carrier has the legal right to sell its property; and, after such sale, ownership of such property is then vested in the purchaser thereof.

The work of the new owner in removing the purchased property is not—in our opinion—work that could belong to the Organization under any rule or theory brought to our attention.

No new construction was involved; Shed "O" was not remodeled; and such work as was done in reference to repairing and patching the existing structure was performed by maintenance of way employes.

We find no rule in the Agreement which, expressly or by inference, prohibits the Carrier from making a sale of its property in the complained of manner.

The evidence before us in regard to the past practice of the parties tends to support the position of the Carrier.

Limiting our decision to the particular confronting facts, the Claim is denied.

It is not our intent to impinge in any degree upon the right of Maintenance of Way Employes to perform work belonging to them.

Since the claim before us is denied on the ground that it is lacking in substantive merit, it is not necessary to resolve the many other issues presented by the parties or in their behalf.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1962.